

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 27 1998

DOROTHY A. EVANS, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OKLAHOMA

In re:)	
)	
LARRY RAY SINELE and)	
LINDA DIANE SINELE,)	Case No. 97-03789-R
)	
Debtors.)	Chapter 7
_____)	
)	
LARRY RAY SINELE and)	
LINDA DIANE SINELE,)	
)	
Plaintiffs,)	
)	
v.)	Adv. No. 97-0360-R
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	
_____)	

JUDGMENT

THIS MATTER comes before the Court upon plaintiffs' Complaint to Determine Dischargeability of Debt filed on October 27, 1997, in which plaintiffs request the Court to determine the dischargeability of plaintiffs' federal income tax liabilities.

WHEREFORE it appearing to the Court that plaintiffs and the United States of America are in agreement as to the disposition of the above-captioned adversary proceeding as to them pursuant to the joint stipulation filed herewith, it is

ORDERED AND ADJUDGED that the stipulation between plaintiffs and the United States of America is hereby APPROVED and ADOPTED by the Court, and it is

FURTHER ORDERED as follows:

1. The plaintiffs filed a Chapter 7 petition in bankruptcy on August 15, 1997.

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Northern District of Oklahoma

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2. On October 27, 1997, the plaintiffs filed the above-captioned adversary action seeking a determination of the dischargeability of federal income tax liabilities owed to the United States.

3. The plaintiffs' federal income tax liabilities for their 1992 tax year are properly subject to discharge, pursuant to 11 U.S.C. Section 727, if and when a discharge is entered in this case.

4. The plaintiffs' federal income taxes and interest for their 1993 tax year are not dischargeable, pursuant to 11 U.S.C. Section 507(a)(8)(A)(i). However, the penalties relating to the plaintiffs' 1993 federal income taxes are properly subject to discharge, pursuant to 11 U.S.C. Section 523(a)(7), if and when a discharge is entered in this case.

5. The plaintiffs' federal income taxes and interest for their 1996 tax year are not dischargeable, pursuant to 11 U.S.C. Section 507(a)(8)(A)(i).

6. The United States has properly filed a pre-petition Notice of Federal Tax Lien in connection with the plaintiffs' 1992 federal income tax liabilities, which continues in effect and attaches to all existing property and rights to property, including exempt property, belonging to the plaintiffs both on and prior to the filing of the bankruptcy petition. See 11 U.S.C. Section 522(c)(1) and 26 U.S.C. Section 6231.

7. The plaintiffs have improperly named the Internal Revenue Service as a defendant in this suit. The IRS, as an agency of the United States, cannot be sued eo nomine, absent the express consent of Congress. See Blackmar v. Guerre, 342 U.S. 512, 514-15 (1952); Castleberry v. Alcohol, Tobacco & Firearms Div. of Treasury Dept., 530 F. 2d 672, 673 n.3 (5th Cir. 1976).

Accordingly, the IRS should be dismissed as a defendant in this suit and replaced by the United States.

IT IS SO ORDERED this 26 day of February, 1998.



DANA L. RASURE, CHIEF JUDGE
UNITED STATES BANKRUPTCY COURT